IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4223 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARALABEN BHANUPRASAD TUNDIA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
Ms. Maithily Mehta, AGP for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 08/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order directing the respondents to pay backwages

from 1st August 1986 to 27th July 1994. The petitioner has also prayed for an appropriate order directing the respondents to release retirement benefits as if the petitioner had continued and all the increments upto 31st July 1994. The petitioner has further prayed for a declaration that the order dated 25th January 1995 wherein no direction of backwages is illegal, unconstitutional, null and void.

2. It is the case on behalf of the petitioner that the petitioner was serving as Deputy Collector; he was ordered to be compulsorily retired by order dated 31.7.1986; and the same was challenged by the petitioner by way of Special Civil Application No. 6333 of 1986. That the said order of compulsory retirement was challenged on the ground that the order of compulsory retirement was punitive as the petitioner was placed under suspension and a criminal case was filed against him under Section

5(2) of the Prevention of Corruption Act as well as under Section 161 of the I.P.C. The said case was registered as 'Special Case No. 1 of 1985'. That the petitioner was acquitted by the learned Sessions Judge against which the State Government filed appeal being Criminal Appeal No. 338 of 1988 and the same was also rejected by this Court on 7.7.1988. Thereafter departmental enquiry was initiated which was withdrawn on 25th January 1995; the order of compulsory retirement itself was withdrawn; and the petitioner was reinstated from 28th July 1994. However, in the said order dated 25th January 1995 it was ordered that the petitioner shall not be paid salary for the period between 1.8.1986 to 27th July 1994. The petitioner filed Civil Application No. 1582 of 1996 in Special Civil Application No. 6333 of 1986 praying for a consequential benefit and salary from 1.8.1986 to 27th July 1994. However, this Court, while disposing of main Special Civil Application No. 6333 of 1986 reserved liberty in

favour of the petitioner to challenge the order dated 25th January 1995 in so far as it directed non-payment of salary and backwages from 1st August 1986 to 27th July 1994 and therefore the petitioner has preferred the present Special Civil Application.

3. Shri BS Patel, learned advocate appearing on behalf of the petitioner has submitted that on withdrawal of the order of compulsory retirement the petitioner has a legitimate right to claim all the backwages as a consequential relief and therefore the action of the respondents and the impugned order dated 25th January 1995 insofar as it denies backwages/salary for the period from 1.8.1986 to 27th July 1994 is bad in law and requires to be quashed and set aside. It is further submitted by him that in fact in view of the acquittal order passed by the learned Sessions Judge which is confirmed by this Court the order of compulsory retirement was withdrawn

and therefore when the order of compulsory retirement was withdrawn the consequences must follow, i.e., payment of backwages for the interregnum period and therefore it is requested to allow the present Special Civil Application accordingly. Shri Patel has relied upon the judgment of this Court in the case of ***Lataben v. Rajyaguru, Administrative Officer & Ors.,*** reported in **1997 (1) GLR 720** and in the case of ***Vasantika R. Jalia v. Baroda Municipal Corporation,*** reported in **1997 (2) GLH 4** in support of his above submission that on quashing and setting aside the order of dismissal, consequential relief of backwages for interregnum period must follow. An additional Affidavit is filed on behalf of the petitioner pointing out that his father had served for few days after the order of compulsory retirement was withdrawn till he attained the age of superannuation and the amount of gratuity has been paid as if the order of compulsory retirement has been converted into

voluntary retirement and the benefits including gratuity etc., are not as if his father had retired on attaining the age of superannuation.

4. Ms. Maithily Mehta, learned AGP appears on behalf of the respondents. It is submitted that entire retirement benefits and pensionary benefits have been paid to heirs of the employee. It is further submitted by her that the order of compulsory retirement was withdrawn considering the request made by the petitioner and representation dated 27.8.1989 and other applications by which the petitioner requested to consider his case sympathetically so as to have some terminal benefits in his favour; the Government of Gujarat reconsidered the case purely on sympathetic consideration and the impugned order came to be passed whereby the petitioner was ordered to be reinstated with effect from 28.7.1994 only and for the interregnum period his services were ordered to

be considered notionally and was retired with effect from 31.7.1994. It is therefore submitted that it is not open for the petitioner now to pray for the backwages/salary for the interregnum period, i.e., for the period from 1.8.1986 to 27th July 1994 and requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing for the parties. It is required to be noted at this stage that the order of compulsory retirement was passed by the authority in the year 1986. It also appears from the record and the affidavit-in-reply that the petitioner submitted an application on 27.8.1989 and subsequent applications to consider his case sympathetically so that he can get some terminal benefits, and the Government of Gujarat reconsidered the case sympathetically. It is also required to be noted at this stage that the order of compulsory retirement was withdrawn by order dated 25.1.1995

and in fact the petitioner attained the age of superannuation on 31.7.1994, however considering the case of the petitioner sympathetically the State Government passed the impugned order dated 25.1.1995 retrospectively withdrawing the order of compulsory retirement, and directed to consider his case that the petitioner was on duty notionally with effect from 27.7.1994, i.e., only for 3 days. As such when the petitioner had already attained the age of superannuation on 31st July 1994, there was no reason for the State Government to withdraw the order of compulsory retirement. However, considering the request made by the petitioner to consider his case sympathetically so that he can get terminal benefits, if the order is passed withdrawing the order of compulsory retirement on condition that the petitioner will not be entitled to backwages for the interregnum period, i.e., for the period from 1.8.1986 to 27.7.1994 and treating the said period notionally, it cannot be said that there

is any illegality committed by the State Government and/or the order passed by the State Government is arbitrary. As such, it is not open for the petitioner to challenge the order dated 25.1.1995 insofar as it denies the salary for the aforesaid period. As stated hereinabove, there was no reason for the State Government to withdraw the order of compulsory retirement retrospectively when the petitioner had already attained the age of superannuation on 31st July 1994. The petitioner cannot be permitted to take advantage subsequently and pray for the backwages. Under the circumstances, the challenge to the impugned order dated 25.1.1995, denying backwages/salary for the period from 1.8.1986 to 27.7.1994, fails.

6. So far as the decisions relied upon by the learned advocate appearing for the petitioner as referred to hereinabove are concerned, the same will not be applicable to the facts of the

present case, as in the present case on the request made by the petitioner to withdraw the order of compulsory retirement so that he can get retiral benefits the State Government considered the case of the petitioner sympathetically and passed the order treating the petitioner on duty for three days only, i.e., from 28.7.1994 to 311.7.1994 and therefore the aforesaid two decisions will not be of any assistance to the petitioner. However, at this stage, the Judgment of the Hon'ble Supreme Court, in the case of ***M.L. Binjolkar vs. State of M.P.***, reported in ***2005 (2) S.C.C. Page 224***, is required to be referred to wherein the Hon'ble Supreme Court has held that, full backwages are no longer a natural corollary of order of reinstatement and grant and quantum of backwages would depend upon several factors and the Court has to weigh pros and cons of each case and take a pragmatic view. Thus, even otherwise the decisions of this Court, relied upon by the petitioner referred to hereinabove,

will not be helpful to the petitioner in view of the subsequent decision of the Hon'ble Supreme Court.

7. So far as the grievance made by the petitioner in the Affidavit-in-Rejoinder that amount of gratuity, which is paid to the petitioner [heir of the employee], is on a lower side is concerned, no particulars are given by the petitioner. If the petitioner is of the opinion that the petitioner is paid lesser retirement benefits, then it will be open for the petitioner to initiate proceedings before appropriate forum in accordance with law and on merits.

8. For the reasons stated above, the petition fails and is required to and is dismissed accordingly. Rule is discharged. There shall be no order as to costs.

Rmr. [M.R. Shah, J.]